

Chapter 5

Determination processing, including new IRM, caveats and other issues

*By Peggy Ferguson (Cincinnati) and Mark Otten (Cincinnati)
And
Norma Quinn (Cincinnati) and Walter Wells (Cincinnati), Reviewers*

*INTERNAL REVENUE SERVICE
TAX EXEMPT AND GOVERNMENT ENTITIES*

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Important Aspects of the new IRM

Overview

Introduction	This section provides guidance on important aspects of the new IRM. It also points out changes made by the new IRM pertaining to the procedures for processing applications for the Employee Plans Determination Letter Program.
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New 7.11.1, Employee Plans Determination Letter Program

Introduction-7.11.1 Provides procedures	IRM 7.11.1 provides procedures for processing applications for Employee Plans Determination Letter Program. It contains new material that replaces and obsoletes procedures covered in IRM 7.4.1, Chapters 1 to 4., Employee Plans Determination Letter Program Handbook which is obsolete. This new IRM 7.11.1 is reusing the catalog number (36161K) previously assigned to old IRM Handbook 7.4.1 CH. 1.
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Issue date	The new IRM 7.11.1 was issued on September 1, 2002.
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User Fees, 7.11.1.1.3

New IRM adds sentence and table If the agent identifies an incorrect user fee was submitted, the agent will take action as indicated in the following table.

If	And	Then
Additional user fee is required or user fee check is dishonored.	Case is a screening case	<ol style="list-style-type: none"> 1. Agent will complete Form 5621 to document why additional user fee is required or indicate user fee check was dishonored. 2. Case will be updated and forwarded to the Cincinnati area office as a user fee issue case. See Exhibit 7.11-1-2 for mailing address.
Additional user fee is required or user fee is dishonored	Case is a determination	<ol style="list-style-type: none"> 1. Agent will contact employer or representative to secure additional user fee. 2. After securing additional user fee, agent will prepare Form 3198 providing the EIN, sponsor name, and plan number. 3. Agent will send Form 3198 and check along with a copy of Form 8717 and the first page of the appropriate Form 5300 series application to the user fee clerk at the Cincinnati area office. See Exhibit 7.11.1-2 for mailing address.
Refund of user fee required	Case is a screening case or a determination case	<ol style="list-style-type: none"> 1. Agent will document Form 5621 as to why a refund is due. 2. Agent will prepare Form 1725 providing the EIN, sponsor name, plan number, amount and reason for refund. 3. Form 1725 must be signed and dated by agents supervisor 4. Agent will send Form 1725 along with copies of Form 8717 and the first page of the appropriate Form 5300 series application to the user fee clerk at the Cincinnati area office. See Exhibit 7.11.1-2 for mailing address.

Areas Where Determination Letters Are Issued, 7.11.1.2.1

**New IRM
deletes
Adopters of
regional
prototype plans
and adds
partial
terminations**

The Service will issue a determination letter with respect to completed or proposed transactions for initial qualification, amendment or restatement of:

- Individually designed plans
 - ESOPs
 - Collectively bargained plans
 - Adopters of master and prototype plans
 - Adopters of volume submitter plans
 - Multiple employer plans
 - Foreign situs trusts
 - Group trusts
 - Terminations
 - Partial terminations
-

Application Forms, 7.11.1.2.4

**New IRM
deletes Form
4461-B and
Form 5303**

Requests for a determination or opinion letter must be submitted on the proper application forms. See section 3 of Rev. Proc. 2002-6, 2002-1 I.R.B. 203.

- a. Form 4461, Application for Approval of Master and Prototype Defined Contribution Plan;
 - b. Form 4461-A, Application for Approval of Master and Prototype Defined Benefit Plan;
 - c. Form 5300, Application for Determination for Employee Benefit Plan, for individually designed plans and for adopters of pre-approved plans under certain circumstances;
 - d. Form 5307, Application for Determination for Adopters of Master and Prototype or Volume Submitter Plans;
 - e. Form 5309, Application for Determination of Employee Stock Ownership Plan, for initial determination or amendment regarding a plan intended to meet the requirements under IRC Sections 409 or 4975(e)(7) (is submitted as an attachment to);
 - f. Form 5310, Application for Determination Upon Termination, (a determination letter request regarding a partial termination must be submitted on);
 - g. Form 6406, Short Form Application for Determination for Amendment of Employee Benefit Plan.
-

Materials Open to Public Inspection, 7.11.1.3.1

**New IRM adds
items to list
(highlighted)**

- (1) The right side of the administrative file contains material open to public inspection. It should be assembled, from top to bottom, as follows:
 - a. Form 8326 - EP Transmittal Sheet, most recent copy;
 - b. Index to the administrative case file, if applicable. (Prepare an index when a proposed adverse determination letter is issued or interested parties have commented and those comments have been rejected. The index will contain those items identified in section 601.201(0)(8) of the SPR as comprising the administrative record);
 - c. File copy of unagreed report, if applicable;
 - d. Form 8671 EDS computer generated form Employee Plan Case Closing Sheet, (2 copies);
 - e. Determination letters for current application stapled ;
 - f. Final letter to interested parties and the final letter to the employer regarding interested party comments;
 - g. Form 8717, User Fee Request for Determination Application;
 - h. Form 2848, Power of Attorney; and/or Tax Information Authorization and , Third Party Contact Authorization Form, if applicable;
 - i. Most recent determination letter;
 - j. Opinion, notification, advisory and prior determination letters;
 - k. Application form and attachments (i.e. Schedule Q, explanations to the applications, including Notice of Merger, Consolidation or Transfer of Plan Assets or Liabilities), if submitted;
 - l. Written correspondence between the Service and the applicant in chronological order (such as 10 day letter, withdrawal letter, proposed adverse determination letter, etc.);

Note: Amendments and revisions to the application should be separated from correspondence.

Continued on next page

Materials Open to Public Inspection, 7.11.1.3.1, Continued

New IRM adds
items to list
(continued)
(highlighted)

- m. Other documents issued to the applicant by the Service dealing with the qualification issue; (i.e. closing agreement);
- n. Interested Party Comments;

Note: Informant communications can not be disclosed and should not be maintained in the administrative file. See IRM 25.1, Fraud.

- o. Correspondence with interested parties, with respect to the written comments referred to above;
- p. Board of Director's resolution to terminate the plan, if applicable;
- q. Proposed amendments;
- r. Executed amendments;
- s. Plan and/or group annuity contract;
- t. Trust instrument;
- u. Notice to Interested Parties;
- v. Collectively Bargaining Agreements;
- w. Plans and/or amendments previously ruled upon;
- x. Supplemental data supporting the application, (i.e., statistical analyses on turnover data, coverage or allocation schedules, balance sheets, and receipts and disbursements statements). Miscellaneous materials and correspondence relating to the application, (e.g., specimen copies of individual life insurance contracts and formal announcements to employees);
- y. Form 5446, (Public Inspection Record); and
- z. Purge material for agreed/favorable letter cases.

Note: Arrange in chronological order each category of material listed in items a.-z. that includes multiple items.

- (2) Use to document when members of the public have examined the case file, as permitted by applicable disclosure regulations.
-

Materials Not Open to Public Inspection, 7.11.1.3.2

**New IRM adds
items to list
(highlighted)**

(1) The left side of the administrative file contains material that is not open to public inspection. It should be assembled, from top to bottom, as follows:

- a. Form 5666, EP/EO Referral and attachments, if applicable;
- b. Form(s) 5464, Case Chronology Record. In chronological order.
- c. Form 6088, Distributable Benefits for Employee Pension Benefit Plans, if applicable;
- d. Form 5621, Technical Analysis Control Sheet.
- e. Demonstration 3, 5, 6 or 9 or other sensitive information which is not open for public disclosure. See I.R.M. 7.11.1.3.
- f. A copy of the official report when the Service makes an investigation regarding the facts as submitted by the applicant or in comments submitted by interested parties.
- g. Worksheets prepared by the specialist, including any Alert Guidelines Worksheets.
- h. Form 5456, Reviewer's Memorandum, and , Response to Reviewer's Memorandum. Leave loose until accepted by the Quality Assurance Staff;
- i. Form 5402, Appeals Transmittal Memorandum, and Supporting Statement, along with any workpapers prepared by Appeals.
- j. Other miscellaneous materials not disclosable, as identified by disclosure regulations, and IRM 11.3, Disclosure of Official Information. (These materials include pertinent information from the old law plan file such as the determination letter, worksheets and application and including examination and deduction referrals).

Note: Arrange in chronological order each category of material listed in items a.- j. that includes multiple items.

Technical Screening, 7.11.1.5

**Important
aspect**

New IRM adds
phrase and
sentence
(highlighted)

1. Technical screening is a process of inspecting determination letter applications to close them on their merit or to limit the amount of review. Generally, depending on inventory levels, all technical screening is handled in Cincinnati, Ohio.
 - a. It is an efficient process for reviewing a large number of applications.
 - b. Technical screening is performed generally after the application is input on EDS, but before assignment to a specialist.
 2. Technical screening duties require experienced and technically qualified specialists.
 3. Consider the case on its merits, keeping in mind areas in which the greatest potential for noncompliance exists.
 4. Cases that cannot be closed on merit by the technical screener are assigned to a specialist as soon as possible.
 5. The technical screener assigns the case grade using the criteria in the Case Assignment Guide. See *IRM 7.11.2*, EP Case Assignment Guide.
 6. The technical screener generally resolves all user fee problems before closing the case on merit or assigning the case to a specialist since the EP User Fee Adjustment Clerk is located in Cincinnati.
-

Technical Screening Procedures, 7.11.1.5.1

Prepare Forms 5621 and 5464-A for all cases

Technical screeners must prepare Form 5621(Technical Analysis Control Sheet) and Form 5464-A (Case Chronology) for **all** cases. Former IRM excluded plan terminations.

New IRM deletes - prepare Form 9334 for terminations

Old IRM included: Prepare Form 9334 for terminations. New IRM deletes this sentence.

Analyzing Applications, 7.11.1.5.1.1

**New IRM adds
4 items**

1. The technical screener will analyze the plan or parts of the plan in accordance with the screening guidelines and using the appropriate tools of analysis. See I.R.M. 7.11.1.6.
 - a. The technical screener will assign the case if there is a potential disqualifying provision or if technical advice is to be requested.
 - b. The technical screener will ensure that any conclusions regarding an application are consistent with any known, concurrent examination.
 2. After analyzing the case the technical screener will fax or call for additional information if the case can be closed with minimum contact.
 3. The technical screener will analyze the application as early as possible. However, a determination letter on a plan subject to comments by DOL, PBGC, or interested parties, may NOT be issued before 60 days have elapsed from the control date.
 - a. This 60-day period will permit receipt and consideration by the Service of any comments.
 - b. When interested party comments are received after the analysis of the plan, but prior to issuance of a favorable letter, appropriate consideration will be given to the comments. See Regs. Section 1.7476-2.
 4. Issue determination letters for plans not subject to the “right to comment” and “notification” procedures as soon as possible after receipt of a complete application. The following plans are not subject to the right to comment:
 - a. A plan which has not at any time after September 2, 1974, provided for employer contributions, and
 - b. A plan established and maintained by a society, order, or association described in IRC Sections 501(c)(8) or (9) if no part of the contributions to, or under, such plan are made by employers of participants in such plan.
 - c. Specimen Plans (not the plan of any specific employer).
-

Accelerated Processing Guidelines, 7.11.1.5.2

Important aspect

- 1) Accelerated processing criteria are used to technically screen terminations, amendments, and initial applications for determination letters. These are separated into the following three categories –
 - a) mandatory assignment
 - b) discretionary assignment
 - c) merit closures
-

Mandatory Assignment, 7.11.1.5.2.1

New IRM adds 2 types of cases

1. Safety Valve (described in Regs. section 1.401(a)(4)-3(c)(3)).
 2. Cash Balance Plans
-

New IRM deletes leveraged ESOPs

Old IRM included Leveraged ESOPs under Mandatory Assignment. New IRM deletes it.

Discretionary Assignment, 7.11.1.5.2.2

New IRM adds Leveraged ESOPs to list	New IRM adds Leveraged ESOPs to list of Discretionary Assignment cases. Former IRM had this type of case as a Mandatory Assignment.
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Tools and Extent of Analysis, 7.11.1.6

New IRM adds to list of Alert Guidelines	No.	Topic	Worksheet Form #	Explan. Document #
	13	401(h)	13069	11433

Additional Information Requests, 7.11.1.6.1.3

New IRM adds sentence	All written correspondence goes to the taxpayer with a copy of the correspondence to the taxpayer's representative.
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Failure to Reply, 7.11.1.6.1.4

Important aspect

- (1) If the applicant is asked to furnish additional facts, information, or amendments needed to make a determination, but has failed to do so within a reasonable time (not more than 30 calendar days unless granted an extension) , send the applicant a 10-Day Follow-Up Letter, Form Letter 1197 (DO/CG).
 - (2) The 10-day letter --
 - a. allows 10 additional workdays for the applicant to furnish the requested information and specifies each additional item previously requested and the section of the Code to which the information relates.
 - b. informs the applicant that failure to comply with the request within the 10-day period will result in the application being processed on the basis of the information available.
 - c. must be approved by the group manager and issued in the name of the Director, EP Rulings and Agreements. Quality Review Staff need not review this letter.
 - (3) Include the plan deficiency paragraphs used in the initial contact letter in the 10-day follow-up letter to the extent the information requested in the initial contact has not been submitted.
 - (4) If the applicant fails to furnish the requested facts, information, or amendments timely, process the application on the basis of the information previously provided and prepare a proposed adverse determination letter, Letter 1755(DO/CG), if applicable.
-

Case Chronology Record (Form 5464), 7.11.1.7.2

New IRM deletes statement

Former IRM stated: "Do not complete Form 5464 for cases screened out by Technical Screener". This statement has been deleted from the new IRM.

Administrative Files, 7.11.1.7.3

References to microfiche deleted

References to microfiche have been deleted from the new IRM.

Mandatory Review Procedures, 7.11.1.12.1

New IRM adds 2 types of cases

1. Foreign Plans
 2. Proposed adverse determination letters
-

Unagreed Cases, 7.11.1.14

Important aspect

- 1) Procedures are provided on processing determination letter application cases which are closed unfavorable to the taxpayer.
 - (2) In accordance with the provisions of RRA section 3504, when issuing a letter of proposed deficiency which allows the taxpayer an opportunity for administrative review with Appeals, the examiner must explain to the taxpayer the entire process from examination through collection, including the assistance available to the taxpayer from the National Taxpayer Advocate.
 - a. In the case of proposed adverse determination letters, use Letter 1755 (DO/CG) and enclose and , Appeal Procedures -- Adverse Determination Letter on Qualification.
-

Proposed Adverse, 7.11.1.14.3

**Important
aspects of
proposed
adverse**

- (1) If a proposed adverse determination letter is to be issued:
 - a. specify each reason why the plan fails to qualify in clear, concise, and complete language.
 - b. discuss each feature of the plan to which exception is taken, including those for which unexecuted amendments have been received.
Correcting amendments are not acceptable in this instance until they are adopted. Use Letter 1755(DO/CG).
 - (2) Discuss each disqualifying feature separately on an enclosure to the letter. The discussion of each issue should contain the following:
 - a. Article and/or section of the plan
 - b. Pertinent facts
 - c. Code and regulations citations
 - d. Revenue ruling and court case citations
 - e. Arguments of the specialist and the applicant
 - f. Conclusion
 - (3) The group manager should review the draft of the proposed adverse letter to ensure the case has been fully developed as to facts, issues, and law.
 - (4) Route through the Quality Assurance staff for pre-issuance review and attach to the case file.
 - (5) The case will be returned to the group which will be responsible for mailing the 1755 (DO/CG) letter to the taxpayer and representative.
-

Review Procedures, 7.11.1.15.1

Case may be returned	Former IRM stated: "If the reviewer disagrees with specialist's recommendation, the case file <u>must</u> be returned for correction and/or further development". New IRM states <u>may</u> be returned.
Reviewer responsible for issue of letter	Former IRM stated: "After all issues are resolved, the case is returned to the group". New IRM changed to state the reviewer is responsible for the issuance of the favorable determination letter.

Requesting Technical Advice, 7.11.1.16

New IRM adds to list	Technical advice must be requested on the following matters: Cases involving the conversion from a traditional defined benefit formula to a cash balance formula.
-----------------------------	--

Processing of Volume Submitter and Master and Prototype Applications, 7.11.1.20

Regional Prototype and Regional Prototype Mass Submitter plans deleted	<p>New IRM deletes Regional Prototype Plans and Regional Prototype Mass Submitter Plans from the instructions on processing.</p> <p>This chapter provides instructions on processing:</p> <ul style="list-style-type: none">. Volume submitter plans. Master and Prototype (M&P) Plans
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Form 3558, Technical Correction Report, 7.11.1.21.3

IRM added	7.11.1.21.3 , Technical Correction Report (09-01-2002)
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Purpose of form 3558	Form 3558, Technical Coordination Report, is used to exchange information and recommendations in regard to abuses, inequities and administrative problems encountered in the interpretation and improvement of the tax laws.
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Form required if form deficiency found in plan document	<p>Form 3558 should also be completed and forwarded to the Volume Submitter Coordinator (VSC) for EP Determinations in Cincinnati, Ohio if during:</p> <ul style="list-style-type: none">• the examination of an adopter of a volume submitter specimen plan or• the review of a determination letter application for an adopter of a volume submitter specimen plan, <p>the specialist determines that an amendment is needed to the approved volume submitter specimen plan in order for the plan to meet the Internal Revenue Code. A thorough explanation of the form deficiency should be entered in Item 11 of Form 3558. It should be signed by both the originating EP specialist and his or her manager.</p>
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If an examination is performed, and no operational deficiencies	Where an Examination is being performed, if no operational deficiencies are found, the EP Specialist should close the case with Disposal Code 01 - No Change.
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Form 3558, Technical Correction Report, 7.11.1.21.3, Continued

**If operational
deficiencies
found**

If operational deficiencies are found during an examination, the EP Specialist will secure amendments to correct the plan deficiencies for the plan under examination. Form 3358 will be prepared and forwarded to the VSC who will contact the practitioner concerning the offensive language. If the remedial amendment period under *IRC Section 401(b)* has expired, the EP specialist must advise the taxpayer of the relief available under *Rev. Rul. 82-66, 1982-1 C.B. 61* and *IRC Section 7805(b)* and take appropriate steps to make this relief available. Where a determination letter application is being reviewed, the EP specialist should complete their review of the application without requesting an amendment to the form deficiency contained in the approved provisions of the specimen plan.

**VSC will
review form
3558**

The VSC for EP Determinations in Cincinnati, Ohio will review the Form 3558 and the disputed language of the volume submitter specimen plan.

If the VSC agrees that the disputed language is in fact a form deficiency in violation of the qualification requirements of the Internal Revenue Code, the VSC will contact the volume submitter practitioner sponsoring the specimen plan and request prospective correction of the deficiency.

Revoking Advisory Letters, 7.11.1.21.4

**New IRM adds
section for
revoking
advisory letters**

7.11.1.21.4 Revoking Advisory Letters (09-01-2002)

- (1) In situations where a volume submitter practitioner is notified by the VSC of a form deficiency contained within their approved volume submitter specimen plan in violation of the qualification requirements of the IRC and such practitioner refuses to correct it prospectively, the VSC has the discretion to revoke the advisory letter issued to such specimen plan.
 - (2) The effect of a revocation of an advisory letter on an adopting employer's determination letter is that the determination letter request will not be eligible for submission on the and an amendment must be adopted to the specimen plan by the adopting employer correcting the form deficiency.
-

Exhibit 7.11.1-2

**Mailing
Address List**

Application Forms 5300, 5307, 5309, 5310, and 6406 should be sent to the Cincinnati Service Center at the following address:

Internal Revenue Service
P.O. Box 192
Covington, KY 41012-0192

Express mail or delivery service should be sent to;

Internal Revenue Service
201 West Rivercenter Blvd
Attn: Extracting Stop 312
Covington, KY 41011

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Exhibit 7.11.1-2, Continued

The mailing address for the EP Centralized Determinations site is as follows:

Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Express mail or delivery service should be sent to;

Internal Revenue Service
550 Mail Street
Cincinnati, OH 45202

The following additional identifiers may be added to the above addresses for the Centralized site:

Volume Submitter Coordinator - VSC - Room 5106
Records Unit - Room 4010
Manager, EP Determinations - Room 5120
Manager, EP Determinations Quality Assurance - Room 7008
EP User Fee Issues - Room 5106
EP User Fee Adjustments Clerk - Room 4024
EP Customer Account Services (CAS) - Room 2508

The mailing address for referrals is as follows:

Internal Revenue Service
EP Classification Unit
McCaslin Industrial Park
2 Cupania Circle
Monterey Park, CA 91755-7431

Prototypes and volume submitters-deviation from approved language

General rule-amending a prototype result in individually designed plan

An employer that amends any provision of an approved M&P plan including its adoption agreement (other than to change the choice of options, if the plan permits or contemplates such a change) or an employer that chooses to discontinue participation in a plan as amended by its sponsor and does not substitute another approved M&P plan is considered to have adopted an individually designed plan. A Form 5300 and additional user fee, if applicable, should be secured. Rev. Proc. 2003-6, Section 9.12 (updated annually).

Prototype acceptable deviations

The exception to this rule is amending a prototype for EGTRRA.

A plan may amend for EGTRRA through the adoption of a separate, clearly identified addendum to the plan and/or adoption agreement that is limited to the provisions of EGTRRA. Notices 2001-42 and 2001-57.

A technical screening alert issued Oct. 1, 2002 allows practitioners to add at the end of the document an additional article with all EGTRRA amendments or delete a pre-approved article and all EGTRRA amendments.

Volume submitter acceptable deviations

Deviations from the language of the approved specimen plan will be evaluated based on the extent and complexities of the changes. If the changes are determined not to be compatible with the volume submitter program, a Form 5300 and additional user fee, if applicable, should be secured.

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Prototypes and volume submitters-deviation from approved language, Continued

**Volume
Submitter
acceptable
deviations-but
not allowed in
specimen**

The following is a list of items not allowed in the volume submitter specimen plan, but are acceptable volume submitter deviations:

- a. A bad boy clause. This is a clause where a plan institutes a slower vesting schedule at the time of termination for an employee that has committed a transgression against the employer or the plan.
- b. Covenants not to compete.
- c. The grant of past service outside of the safe harbor for past service will not be included in the volume submitter document. A DEMO 7 may be needed.
- d. The volume submitter specimen will be set up to provide alternative provisions to allow adopters to select the provisions for the top paid group and calendar year elections for the HCE definition that was used to operate the plan during the remedial amendment period areas. However, if alternative provisions to handle these situations are not part of the pre-approved volume submitter specimen document then modification will have to be submitted to conform the plan document to operation.
- e. The volume submitter specimen document must provide language to comply with section 415(e) for years prior to 2000 and must provide for the repeal of section 415(e) for limitation years beginning on and after January 1, 2000. If the adopter of a volume submitter document provides for the continuation of the 415(e) limits after January 1, 2000, they may be added as a modification to the volume submitter specimen document.

Continued on next page

Prototypes and volume submitters-deviation from approved language, Continued

**Volume
Submitter
acceptable
deviations-but
not allowed in
specimen
(continued)**

-
- f. A negative CODA provision.
 - g. In kind contribution language.
 - h. Submitters that would normally make use of open fill-in areas in preparing plans for individual adopters would, as always, be able to include the provisions that they would "fill-in" by treating the provisions as modifications.
 - i. Amending for EGTRRA. A plan may amend for EGTRRA through the adoption of a separate, clearly identified addendum to the plan and/or adoption agreement, which is limited to the provisions of EGTRRA. Notices 2001-42 and 2001-57. A technical screening alert allows practitioners to add at the end of the document an additional article with all EGTRRA amendments or delete a pre-approved article and add all EGTRRA amendments.

The following unusual language has been approved in the specimen document and should **not** be challenged or listed as a modification:

Accumulated leave arrangement-Angelo Noe (513-263-3536) the Volume Submitter coordinator is considering a "write-up" on this language.

Screening Topics

Closing code “09”

Closing code “09” is to be used for any case merit closed during Technical Screening or Accelerated Processing where contact is made with the taxpayer or representative. Closing code “09” replaces closing code “00” and specialist number 31599. When using closing code “09” the specialist number will be the number of the specialist who closed the case. The “09” closing code, with a circle around it, should be placed on the input sheet above the caveats. The closing code must be circled in order to differentiate it as a status code and not a caveat.

In order to close a case status “09”, follow the normal procedures except for the following:

1. To update the master record to status “09”, on the inventory control system menu screen, choose 19 instead of 01.
 2. To approve a case after it has been put in status “09”, on the inventory control system choose 29 instead of 08 for managerial approval.
-

Accelerated Processing by Area

On June 17, 2002, the Service, began issuing a unique number to power of attorneys’ who wish to have their submissions (Form 5307 and/or 5300 only) kept together to be worked in the same area of the country. To participate, the power of attorney must have at least 30 applications that will be filed at one time. The power of attorney cannot request a specific area and/or agent receive their submissions.

Sponsors will be issued a number, which must be written on every application in green ink on the upper left-hand corner of the first page of the application.

If a screener receives a case that has a number in green ink in the upper left-hand corner, the case should be returned to the group secretary to send to the proper area. The first digit indicates which area the case should be assigned.

- 1-Northeast
 - 2-Baltimore
 - 3-Chicago
 - 4-Atlanta
 - 5-Cincinnati
 - 6-Los Angeles
-

Continued on next page

Screening Topics, Continued

**Cases related
by POA (no
green number)**

The service center is now keeping cases related by POA together, if they are submitted together. These cases have a tab stapled in the right hand corner of the file along with a white slip of paper stating, “___ out of ___ cases.” When screening a bundle of cases, the screeners will keep these together if assigned to the group by grade. If any case from the bundle can be closed on merit, the screener will separate these from the “assigned to the group” cases and change the numbers on the white slips. The screeners have also been asked to attach a piece of paper on the front of the banded cases stating “___ cases related by POA.”

**Power of
Attorney
rights-authority
to sign
application**

The Form 2848, Power of Attorney and Declaration of Representation, grants representative authority to an individual, not to a firm. Therefore, an individual must be indicated on line 2 of the form, not just the name of the firm.

If the Form 2848 makes clear reference to Forms 6406, 5300, 5307, or 5310 on line 3, it gives the named representative authority to sign Forms 6406, 5300, 5307, or 5310 application. Reference to these forms on line 3 is sufficient and does not require further clarification of specific “acts authorized” on line 5, Form 2848.

If the Form 2848 makes clear reference to the Form 8717 on line 3, it gives the named representative authority to sign the user fee form, Form 8717, including certification of exemption. Reference to this form on line 3 is sufficient and does not require further clarification of specific “acts authorized” on line 5.

Continued on next page

Screening Topics, Continued

**Verifying User
Fee Is Correct**

If an old revision (2-2000) of the Form 8717 is submitted, the user fee was paid and the application appears to comply with the requirements of Notice 2002-1 (i.e. fewer than 100 employees, (one employee has to be an NHCE) and the original effective date is on or after 12-9-89), the screener will contact the POA/taxpayer to verify that a user fee is required. If no user fee is required, the screener will secure a current Form 8717 (Rev. 2-2002) with the certification signed and then process the refund. Otherwise, do not make contact to secure the new revision of Form 8717.

If the new revision Form 8717 (Rev. 2-2002) is submitted with a user fee and the certification is also signed, contact the POA and/or taxpayer to verify which is correct. If it can be determined from the case file that the user fee is due, do not contact the POA/taxpayer.

**Volume
Submitters and
EGTRRA
amendments**

Notices 2001-42 and 2001-57 requires pre-approved plans (i.e., M&P plans and volume submitter specimen plans) amend for EGTRRA through the adoption of a separate, clearly identified addendum to the plan (or basic plan document) and/or adoption agreement which is limited to the provisions of EGTRRA. If a pre-approved plan is not amended in this manner, the notices indicate such plan must be treated as an individually designed plan thus requiring the filing of Form 5300.

A technical screening alert was issued Oct. 1, 2002, allowing practitioners to modify their GUST approved specimen plan to either add at the end of the document an additional article which contains all of the EGTRRA amendments or delete a pre-approved article from somewhere in the specimen plan, which does not contain any provisions which affect or pertain to the employer, and insert in its place an article which contains all of the EGTRRA amendments. This is an acceptable variation to the addendum requirement, which does not require the filing of Form 5300.

Exclusion of Part-time Employees and Independent Contractors

**Code and
Regulations-
Participation**

IRC section 410(a) 1 provides, in general, that a trust will not be qualified if the plan of which it is a part requires, as a condition of participation, that an employee complete a period of service with the employer maintaining the plan extending beyond the later of the date on which the employee attains the age of 21 or the date on which he completes one year of service (or two years of service in the case of a plan which satisfies IRC section 410(a)(1)(B)(i) of the Code.

IRC section 410(b) of the Code provides certain minimum coverage requirements. Under IRC section 410(b), a plan could satisfy these requirements by benefiting such employees that qualify under a classification set up by the employer that did not discriminate in favor of employees who are officers, shareholders, or highly compensated.

IRC section 1.410(a)-3(d) of the regulations provides that the minimum age and service rules of the Code do not preclude a qualified plan from establishing conditions, other than conditions relating to age or service, which must be satisfied by plan participants.

IRC section 1.410(a)-3(e)(1) of the Regulations, provides that plan provisions may be treated as imposing age or service requirements even though the provisions do not specifically refer to age and service,

Continued on next page

Exclusion of Part-time Employees and Independent Contractors, Continued

**Part-time
employee
exclusion-
November 28,
2000 Tech
Advice**

The question of whether a particular plan exclusion classification violates the minimum service requirements of section 410 of the Code by indirectly imposing an impermissible service requirement, should be decided when the plan is examined by the Service and not in connection with the issuance of a determination letter.

Publication 794 is an enclosure to each favorable determination letter issued. The publication states “A determination letter may not be relied on with respect to whether a plan’s exclusion classifications, if any, violate the minimum age or service requirements of IRC sections 410 by indirectly imposing an impermissible age or service requirement.”

Determination agents, therefore, should not request plan administrators to remove or clarify plan language relating to part-time employee or other exclusions with indirect service related conditions.

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Exclusion of Part-time Employees and Independent Contractors, Continued

**Independent
contractors
exclusion-
February 15,
2000 Tech
Advice**

Independent contractors are generally precluded from participating in the plan of an employer based on the exclusive benefit rule described in IRC section 401(a). IRC section 410(a) provides, in part, that a trust shall not constitute a qualified trust if the plan requires as a condition of participation in the plan that an employee complete a period of service with the employer extending beyond the later of the date that the employee attains age 21 or the date the employee completes one year of service. Independent contractors are not employees (except of themselves) and, thus, the IRC section 410(a) minimum age and service conditions are irrelevant for purposes of determining whether independent contractors can be excluded from a qualified plan of an entity that engages them.

Determining whether a particular worker is an independent contractor or an employee is not always straightforward, for it is based on facts and circumstances.

An employer, making the initial classification of a worker's status, has legitimate concerns in protecting its plan from the consequences of retroactive reclassifications if a mistake is made. Nothing in IRC section 410(a) prevents an employer from addressing these concerns through preventative measures similar to the following plan language; "may exclude from Plan participation employees who are not reported on the payroll records of affiliated companies as common law employees (even if a court or administrative agency determines that such individuals are common law employees and not independent contractors)."

As with part-time employee exclusions, determination agents should not request plan administrators to remove or clarify plan language relating to independent contractors.

Frozen Plans/Wasting Trust

**Introduction-
defining
wasting trust**

A plan under which allocations or benefit accruals have ceased is not terminated if, after an amendment is adopted to terminate the plan, the plan assets are not distributed as soon as administratively feasible but are held in the trust which remains in existence. The plan is considered an ongoing plan, which must continue to satisfy the requirements of section 401(a) of the Code.

Whether a distribution is made as soon as administratively feasible is determined under all the facts and circumstances of each case, but generally, a distribution which is not completed within one year following the date of termination is presumed not to have been made as soon as administratively feasible.

A transfer of benefits pursuant to the elective transfer rules of the Regulations under IRC section 411(d)(6) is generally treated as a distribution of the participant's account balance or accrued benefit for purposes of IRC section 401(a)(9).

Continued on next page

Frozen Plans/Wasting Trust, Continued

Frozen Plans may not be subject to coverage requirements

Under the following exceptions, even though a frozen plan must continue to comply with all the qualification requirements of IRC section 401(a) to remain qualified, the plan may not be subject to the minimum coverage and participation requirements of section IRC 401(a)(26) and IRC section 410(b) if the plan is frozen and no benefits (including forfeitures, top-heavy minimums, or accruals due to an increase in average compensation) are allocated or accrued during the plan year:

- a. Regulation section 1.410(b)-3 provides that a plan is deemed to satisfy IRC section 410(b) in any plan year during which no participant receives an allocation of contributions or forfeitures, or accrues a benefit under the plan. However, for any plan year the plan is required to provide top-heavy minimums under IRC section 416, or if the plan takes future compensation increases into account in determining participants' accrued benefits, the plan will be treated as providing allocations or accruals, and thus this exception will not apply.
- b. Under Regulation section 1.401(a)(26)-2(b), if no employee is currently eligible to accrue any additional benefits under a plan formula, such formula will not be subject to the minimum participation requirements of IRC section 401(a)(26).

Conditions for terminating a frozen plan

A frozen plan has not terminated unless:

- a. The date of termination is established.
- b. The benefits of plan participants and other liabilities under the plan are determined as of the date of plan termination.
- c. The plan assets are distributed as soon as administratively feasible after the proposed date of termination. See Rev. Rul. 89-87.

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Frozen Plans/Wasting Trust, Continued

If a plan has not terminated

Under a plan that has not terminated, additional vesting, funding and benefit accruals may be required and additional qualification requirements **may** have become effective after the proposed date of plan termination.

If a frozen plan is top-heavy, it must provide top-heavy minimum contributions, benefit accruals and vesting even if no other accruals occur. IRC Regulations 1.416-1 T-5.

In any year in which the trust assets have not been distributed, Form 5500 and all appropriate schedules must be filed.

Wasting Trust

Applications for a plan that indicate that assets will not be distributed as soon as administratively feasible should not be processed as terminations. Instead the following steps or actions should be followed:

- a. Pursue the issue with the employer. If the employer agrees to distribute assets, the employer must provide either an amended Form 5310 or written statement indicating that assets will be distributed as soon as administratively feasible.
 - b. Inform the employer that the plan must continue to be amended to comply with all current law provisions to remain qualified and a Form 5300 or 5307 must be submitted.
 - c. If the taxpayer withdraws the Form 5310, the determination case should be considered for examination. If there are indications of potential future operational problems that would affect qualification of the plan, prepare form 5666 and follow local procedures for subsequent examination follow-up action.
-

An Expanded Section on Caveats

Overview

Introduction

This section provides guidance on the proper use of caveats for generating 835 and 1132 determination letters.

Scope of reliance on determination letters

**Caveats for
GUST and
TRA**

All current determination letters are required to consider the qualification requirements of GUST; therefore caveat 97 should be used. Caveat 97 indicates that the determination letter considers the changes in qualification requirements made by the GATT, SBJPA, USERRA, TRA'97, RRA'98 and CRA'00.

If the application is for a governmental plan or any other plan that is requesting a determination letter for TRA'86 and GUST, both caveats 87 and 97 should be used.

If the application is for an adoption of a master or prototype plan that has an opinion letter approving the plan for only TRA'86 or GUST I, caveat 89 should be used. If the opinion letter approved the plan for full GUST, caveat 97 should be used on the determination letter.

Since all terminated plans have to be updated for the current law as of the date of termination, there is no caveat for the laws considered for Letter 1132.

Notice 2001-42

**Provides
guidance on
caveats for
EGTRRA**

Notice 2001-42 provides guidance concerning amendments to qualified plans related to EGTRRA. The Notice provides that (a) individually designed plans submitted for GUST may reflect the changes made by EGTRRA and (b) pre-approved GUST plans may include EGTRRA amendments in the form of a separate, clearly identified addendum to the plan. Caveat #99 was added to all letters after January 1, 2002. This is an automatic caveat and states; “This letter may not be relied on with respect to whether the plan satisfies the requirements of section 401(a) of the Code, as amended by the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16.”

All cases should be reviewed to verify whether they contain EGTRRA amendments. If the Form 5300 or 5307 application includes separate clearly identified proposed or executed EGTRRA amendments, caveats 6, 7, 26, or 27 should **NOT** be used to indicate the determination letter applies to the EGTRRA amendments. Effective immediately, caveat #7061 should be used to acknowledge receipt of the EGTRRA amendments. If the EGTRRA amendments are included within the plan document then the appropriate caveat 6, 7, 26, 27 and 7061 should be included. This caveat reads as follows: “This determination letter acknowledges receipt of your amendments intended to satisfy the requirements of section 401(a) of the Code, as amended by the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16.”

For plans terminating after their EGTRRA effective dates, (for calendar year plans December 31, 2001), the agent should verify the plan has been properly amended for the provisions of EGTRRA that have become effective. Caveats 10 or 11 **should be** added to the determination letter to indicate reliance on these amendments

Correction to a previously issued letter

**Caveat 7054
should be used**

At times it is necessary to issue a corrected determination letter. Generally, our Customer Accounts Services unit, (CAS) in Cincinnati completes these corrections. However, if the taxpayer requests a correction to a determination letter caveat 7054 should be used. The caveat reads: "This letter supersedes our letter dated____." This caveat is the same for the 835 and 1132 letters. Exhibit C, attached, should be completed and forwarded with a copy of the corrected letter to the Federal Records Center to be associated with the case if the corrected letter is generated without the case file.

Announcement 2001-77

**Simplifies
application
procedures**

Per Announcement 2001-77, the Service has simplified its application procedures for determination letters on the qualification of pension, profit sharing, stock bonus and annuity plans under 401(a) and 403(a) of the IRC.

**Eliminates
certain
caveats**

Announcement 2001-77 became effective on July 23, 2001. Section I (F) of Announcement 2001-77 eliminated the caveats to indicate reliance on the Schedule Q and the demonstrations. Publication 794 is attached to each determination letter and has been revised to reflect the limitations on the scope of reliance on the determination letter. The applicant is required to retain copies of the application forms, demonstrations, and all correspondence with the Internal Revenue Service related to the application for reliance on a favorable determination letter.

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Announcement 2001-77, Continued**Caveats
eliminated**

The following table provides a listing of the caveats that were eliminated by Announcement 2001-77.

835 letter caveat #	1132 letter caveat #	Use
59	14	Plan benefits collectively bargained employees only
7020	7020	Non-electing church plans
63	18	No highly compensated employees
64	19	No non-highly compensated employees
65	20	Nonstandardized safe harbor plan
68	23	Aggregated or disaggregated
69	24	Average benefit - Demo 5
70	25	No reliance for coverage
71	26	Design based safe harbor
72	27	General test - Demo 6
73	28	General test using safety valve - Demo 6
74	29	Nondesign based safe harbor - Demo 6
75	30	No reliance for discrimination in amount
77	32	BRF for coverage group
78/79	33/34	BRF for Demo 3 plus coverage group
80	35	BRF for Demo 3 but not for coverage group
7005	Na	Corrected Demo 6
7031	Na	Design based safe harbor for years before
7032	Na	General test for years after
7041	Na	Demo based on estimated data

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Announcement 2001-77, Continued

**Caveats 94, 95,
54 & 55
eliminated**

An e-mail memorandum was issued on 7/20/01 from the Manager, EP Determinations Quality Assurance, to provide guidance on Announcement 2001-77. Caveats 94 and 95 were added to the 835 letter, and caveats 54 and 55 were added to the 1132 letter to indicate reliance on the additional information submitted which changed the scope of reliance on the determination letter. These additional caveats have created confusion among both agents and taxpayers and increased the errors in the determination letters. Effective 12/19/02, we will **discontinue** use of caveats 94 and 95 on the 835 letter and caveats 54 and 55 on the 1132 letter.

Caveats for 835 letters

**Most
commonly
used caveats**

The following table provides a listing of the most commonly used caveats for 835 letters.

Caveat Number	When to use	Notes
6	To condition the determination letter for the receipt of proposed amendments to the plan.	The date of the letter used to submit the proposed amendment should be used. If an undated facsimile is used to transmit the proposed amendment, the received date on the fax should be used for the caveat 6. These dates may be in numeric format, (i.e. 02/25/02 or 02-25-02). The numeric format will allow 2 separate dates to be entered in both caveats 6 and 7.
7	Additional caveat for proposed amendments when needed.	See notes for caveat #6.
12	Use for Form 6406 only. Limits scope of reliance to amendments only. May use in conjunction with caveats #6/#7 or #26/27.	Form 6406 determination letters will generally not contain a law compliance caveat.
26	To indicate the consideration of executed amendments for the plan.	Caveat 26 is used to indicate the execution date of each amendment after the initial adoption that has NOT been included on a prior determination letter. Each amendment included with the application or secured by the agent should be included on the determination letter. Caveat 27 is used if additional space is needed for executed amendments.
27	Additional caveat for executed amendments.	See notes for caveat #26.
28	Used only for the initial adoption of the plan.	Caveat 28 is used to indicate the date the employer executed the <u>initial</u> adoption of a plan.
91	Used for amendments to DB plans which expresses no opinion on the conversion from a traditional defined benefit formula to a cash balance formula.	Caveat should not be used on the initial adoption of a defined benefit plan.
97	Used to show compliance with full GUST.	Generally all plans must comply with full GUST. Caveats 92 & 96 are no longer appropriate. Caveat 97 is the full GUST compliance caveat.

Continued on next page

Caveats for 835 letters, Continued

Caveat Number	When to use	Notes
5998	Used to indicate a copy of the letter is being provided to the authorized Power of Attorney(s).	Copy of letters should be provided to 2 nd POA if so authorized per item #7(b) of Form 2848.
7000	Used to condition determination letter for receipt of proposed restated plan.	Use date of cover letter unless the proposed restatement sent via separate correspondence.
7027	Used in addition to caveat #27 to indicate consideration of executed amendments. Can be used if 5 or 6 amendments are received.	Used in conjunction with caveats #26 and #27 in which if the numeric format is utilized 2 additional amendments may be added. A 9000 series caveat may be used if more space is needed. The 9000 series paragraph should be worded: "This determination also applies to the amendments adopted on____." (Note: the amendment dates should be listed in chronological order).

Special situation caveats

The following table provides a listing of caveats used in special situations for 835 letters.

Caveat number	When to use	Notes
16	Used for plans that contain 403(b) provisions.	This caveat provides that the letter is not a determination as to the 403(b) provisions of the plan.
21	Used to indicate plan meets the Affiliated Service Group Status (ASG) requirements. Used only when specific ASG ruling requested.	The sponsor must apply on Form 5300 and specifically request the ruling. The information outlined in section 14 Rev. Proc. 2002-6 (Revised Annually) should be provided.
22	Used to indicate plan meets the Leased Employee Status of section 414(n). Used only when specific Leased Employee ruling requested.	See notes for caveat #21 above.
23	Used for plans that do not meet the Affiliated Service Group Status requirements. Used only when specific ASG ruling requested.	See notes for caveat #21 above.

Continued on next page

Caveats for 835 letters, Continued

Caveat number	When to use	Notes
24	Used to indicate plan does not meet the Leased Employee Status of section 414(n). Used only when specific Leased Employee ruling requested.	See notes for caveat #21 above.
39	Used for plans involved in termination spin-offs or re-establishments conditioning the letter on receiving approval of changes in funding amortization.	See IRS DOL Implementation Guidelines dated May 24, 1984.
51	Used for Employee Stock Ownership Plans, (ESOP) that meet the requirements of section 4975(e)(7) and have submitted Form 5309 with a 'yes' in item 8(a).	The sponsor must apply on Form 5300 and attach Form 5309. Form 5309 must request a 4975(e)(7) ruling. May apply even if no leverage loan used in plan.
85	Used for plans that meet the requirements of sections 401(h)/420.	The sponsor must apply on Form 5300 and specifically request the ruling. The information outlined in section 16 of Rev Proc. 2002-6 (Revised Annually) should be provided. In addition, the sponsor may provide the appendix from Rev. Proc. 2002-6.
98	Used for multiple employer plans that meet section 413(c).	Only applicants that submit a Form 5300 will receive a determination letter. See section 10 of Rev Proc. 2002-6 (Revised Annually) and QAB 2002-1 dated 10/30/2001 for further details.

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Caveats for 835 letters, Continued

Special situation caveats (continued)

Caveat number	When to use	Notes
7056	Used for plan in which at the sponsor's request the Service determines a partial termination has occurred.	The sponsor must apply on Form 5300 and provide the information required in the instructions to Form 5300.
7058	Used for plan in which at the sponsor's request the Service determines a partial termination has NOT occurred.	The sponsor must apply on Form 5300 and provide the information required in the instructions to Form 5300.
7061	Used to acknowledge receipt of amendments for changes enacted with EGTRRA.	Many practitioners/sponsors want some assurance their "good-faith" amendments for EGTRRA were received by the Service. This caveat is used to provide that assurance. Currently all 835 letter contain automatic paragraph #99 which indicates that the Service has not considered whether or not the amendments for EGTRRA satisfy the requirements of section 401(a). It is no longer appropriate to use caveats #26 or #27 for executed EGTRRA amendments or a 9000 series paragraph for proposed EGTRRA amendments.

Caveats for 1132 letters

Most commonly used caveats

The following table provides a listing of the most commonly used caveats for 1132 letters.

Caveat Number	When to use	Notes
4	Used to indicate the proposed date of plan termination.	This is a <u>required</u> caveat for plan terminations.
5	Additional caveat for proposed amendments when needed.	See notes for caveat # 10.
10	To condition the determination letter for the receipt of proposed amendments to the plan.	The date of the letter used to submit the proposed amendment should be used. If an undated facsimile is used to transmit the proposed amendment, the received date on the fax should be used for the caveat 10. These dates may be in numeric format, (i.e. 02/25/02). The numeric format will allow 2 separate dates to be entered in both caveats 10 and 5.
11	To indicate the consideration of executed amendments for the plan.	Caveat 11 is used for each executed amendment after the initial adoption that has not been previously included on a prior determination letter. Each amendment included with the application or secured by the agent should be included on the determination letter.
5998	Used to indicate a copy of the letter is being provided to the authorized Power of Attorney(s).	Copy of letters should be provided to 2 nd POA if so authorized per item #7(b) of Form 2848.
7002	Used to condition determination letter for receipt of proposed restated plan.	Use date of cover letter unless the proposed restatement sent via separate correspondence.
7027	Used in addition to caveat #11 to indicate consideration of executed amendments. Can be used if 3 or 4 amendments are received.	Used in conjunction with caveat #11 in which 2 additional amendments can be added if the numeric format is utilized. A 9000 series caveat may be used if more space is needed. The 9000 series paragraph should be worded: "This determination also applies to the amendments adopted on____." (Note: the amendment dates should be listed in chronological order).
52	Used for <u>terminations</u> of defined benefit plans expressing no opinion on the conversion from a traditional defined benefit formula to a cash balance formula.	Caveat should be used on all defined benefit plan terminations.

Continued on next page

Caveats for 1132 letters, Continued

**Special
situation
caveats**

The following table provides a listing of caveats used in special situations for 1132 letters.

Caveat number	When to use	Notes
7	Used for plans involved in termination spin-offs or re-establishments conditioning the letter on receiving approval of changes in funding amortization.	See IRS DOL Implementation Guidelines dated May 24, 1984.
44	Used for terminating plans that met the requirements of section 4975(e)(7).	Should verify plan met 4975(e) prior to termination. May be in favorable letter.
6, 9, 8503	These caveats are used in conjunction with a plan that has terminated with assets reverting to the employer.	These caveats alert the sponsor of certain filing requirements and generate the Benefit Assurance Form that is used with reversion referrals. Usually all of these caveats are used, but may not apply to certain tax-exempt entities or governmental plans.
7060	Used to condition the letter for the full vesting of affected participants.	Generally used on terminations when a sponsor agrees to fully vest affected participants under section 411(d)(3). The date of the representative's or sponsor's letter providing for the full vesting is required.

Caveats for 835 letters as they read on EDS

Caveat 6	(Selective) This determination is subject to your adoption of the proposed amendments submitted in your letter dated [20V]. The proposed amendments should be adopted on or before the date prescribed by the regulations under Code section 401(b).
Caveat 7	(Selective) This determination also applies to the proposed amendments dated [20V].
Caveat 12	(Selective) This determination expresses an opinion on whether the amendment(s), in and of itself, affects the continued qualified status of the plan under Code section 401 and the exempt status of the related trust under section 501(a). It is not an opinion on the qualification of the plan as a whole and the exempt status of the related trust as a whole. If this is a multiple employer plan, the employer receiving this letter should mail a copy to all other employers who received a letter on the plan as a whole and continue to maintain the plan.
Caveat 16	(Selective) This is not a determination as to the effect this plan may have on the exclusion allowance under Code section 403(b). (See Rev. Rul. 75-481, 1975-2 C.B. 188.)
Caveat 21	(Selective) Based on the information you have supplied, you are a member of an Affiliated Service Group.
Caveat 22	(Selective) Based on the information you have supplied, this plan satisfies the requirements of Code section 414(n), as amended by the Small Business Job Protection Act (SBJPA).

Continued on next page

Caveats for 835 letters as they read on EDS, Continued

Caveat 23	Selective) Based on the information you have supplied, you are not a member of an Affiliated Service Group.
Caveat 24	(Selective) Based on the information you have supplied, the plan is not subject to the requirements of Code section 414(n), as amended by the Small Business Job Protection Act (SBJPA).
Caveat 26	(Selective) This determination letter is applicable for the amendment(s) executed on [20V].
Caveat 27	(Selective) This determination letter is also applicable for the amendment(s) dated on [20V].
Caveat 28	(Selective) This determination letter is applicable for the plan adopted on [20V].
Caveat 39	(Selective) This determination is conditioned upon your requesting and receiving approval for a change in funding method for revision of the amortization base and period consistent with the Treasury, DOL, and PBGC Implementation Guidelines issued by Treasury on May 24, 1984. (See Rev. Proc. 78-37, 1978-2 C.B. 540.) This approval must be requested within three months from the date of this letter.
Caveat 51	(Selective) This plan satisfies the requirements of Code section 4975(e)(7).

Continued on next page

Caveats for 835 letters as they read on EDS, Continued

Caveat 87	(Selective) This letter considers the amendments required by the Tax Reform of 1986, except as otherwise specified in this letter.
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Caveat 89	(Selective) Except as otherwise specified in an opinion or notification letter regarding this plan, this letter may not be relied upon with respect to whether the plan satisfies the changes in the qualification requirements made by the Uruguay Round Amendments Act (GATT) Pub. L. 103-465, the Taxpayer Relief Act of 1997 Pub. L. 105-34, and the changes in the qualification requirements of the Small Business Job Protection Act of 1996 Pub. L. 104-188 other than the requirements of Code section 401(a)(26).
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Caveat 91	(Selective) Issues arising from the amendment of a defined benefit plan's benefit formula to convert that formula into a cash balance type benefit formula are under study, and this determination letter does not express an opinion on any of these issues. A cash balance type formula generally defines a benefit for each employee by reference to a single-sum amount, such as 10 percent of final average pay times years of service, or the amount of the employee's hypothetical account balance.
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Caveat 92	(Should no longer be used. For historical purposes only) (Selective) This letter considers the changes in qualification requirements made by the Uruguay Round Agreements Act, Pub. L. 103-465, the Small Business Job Protection Act of 1996, Pub. L. 104-188, the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. 103-353, the Taxpayer Relief Act of 1997, Pub. L. 105-34, the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206.

Continued on next page

Caveats for 835 letters as they read on EDS, Continued

Caveat 94	<p>(Should no longer be used. For historical purposes only) (Selective) This determination letter considers the information submitted in your letter dated {20V}.</p>
Caveat 95	<p>(Should no longer be used. For historical purposes only) (Selective) This determination letter also considers the information submitted in your letter dated {20V}.</p>
Caveat 96	<p>(Selective) This letter may not be relied on with respect to the amendments made by section 314(e) of the Community Renewal Relief Act of 2000 ("CRA") to the definitions of compensation in section 414(s)(2) and 415(c)(3) of the Code. The plan will be deemed to satisfy the requirements of sections 414(s)(2) and 415(c)(3) as amended by CRA if the model amendments in Notice 2001-37, 2001-25 I.R.B. 1340, are adopted in accordance with the guidance and procedures in the notice.</p>
Caveat 97	<p>(Selective) This letter considers the changes in qualification requirements made by the Uruguay Round Agreements Act, Pub. L. 103-465, the Small Business Job Protection Act of 1996, Pub. L. 104-188, the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. 103-353, the Taxpayer Relief Act of 1997, Pub. L. 105-34, the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206, and the Community Renewal Tax Relief Act of 2000, Pub. L. 106-554.</p>
Caveat 99	<p>(Automatic) This letter may not be relied on with respect to whether the plan satisfies the requirements of section 401(a) of the Code, as amended by the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L 107-16.</p>

Continued on next page

Caveats for 835 letters as they read on EDS, Continued

Caveat 5998	(Selective) We have sent a copy of this letter to your representative as indicated in your Power of Attorney.
Caveat 7000	(Selective) This determination is conditioned upon your adoption of the proposed restated plan as submitted with your or your representative's letter dated [20V]. The proposed plan should be adopted on or before the date prescribed by the regulations under Code section 401(b).
Caveat 7027	(Selective) This determination letter is also applicable to the amendment(s) dated on [20V].
Caveat 7054	(Selective) This letter supersedes our letter dated [20V].
Caveat 7056	(Selective) Based on the information you have supplied we have determined that a partial termination occurred on [20V].
Caveat 7058	7058 (Selective) Based on the information you have supplied we have determined that a partial termination did not occur.
Caveat 7060	(Selective) This letter is contingent upon the restoration of vested benefits for the affected participants as agreed to in your or your representative's letter dated [20V].

Continued on next page

Caveats for 835 letters as they read on EDS, Continued

Caveat 7061

(Selective)

This determination letter acknowledges receipt of your amendment(s) intended to satisfy the requirements of section 401(a) of the Code, as amended by the Economic Growth and Tax Relief Reconciliation Act of 2001. Pub. L. 107-16.

Caveats for 1132 letters read as follows

Caveat 4	Required) This determination applies to the proposed termination date of [20V].
Caveat 5	Selective) This determination also applies to the proposed amendments dated [20V].
Caveat 6	(Selective) Your plan's qualified status will be adversely affected if the plan assets are returned to you before the plan's liabilities to all plan participants are satisfied. To satisfy plan liabilities, you must either purchase guaranteed annuity contracts, or make cash distributions as soon as administratively possible. When you receive these excess plan assets, you should notify the Service of the date(s) you receive such assets and the date(s) guaranteed annuity were purchased, or the date(s) cash distributions were paid for all participants. The enclosed benefit assurance form may be used for this purpose.
Caveat 7	(Selective) This determination is conditioned upon your requesting and receiving approval for a change in funding method for revision of the amortization base and period consistent with the Treasury, DOL, and PBGC Implementation Guidelines issued by Treasury on May 24, 1984. (See Rev. Proc. 78-37, 1978-2 C.B. 540.) This approval must be requested within three months from the date of this letter.
Caveat 9	(Selective) The asset reversion received by the employer as a result of this termination may be subject to excise tax under the provisions of Code section 4980. If so, Form 5330 must be filed, and the excise tax paid by the end of the month following the month in which the reversion occurred (section 5072 of the Technical and Miscellaneous Revenue Act of 1988).

Continued on next page

Caveats for 1132 letters read as follows, Continued

Caveat 10	(Selective) This determination is subject to your adoption of the proposed amendments submitted in your letter dated [20V]. The proposed amendments should be adopted on or before the date prescribed by the regulations under Code section 401(b).
Caveat 11	(Selective) This determination also applies to the amendments dated [20V].
Caveat 44	(Selective) This plan satisfies the requirements of Code section 4975(e)(7).
Caveat 52	(Selective) Issues arising from the amendment of a defined benefit plan's benefit formula to convert that formula into a cash balance type benefit formula are under study, and this determination letter does not express an opinion on any of these issues. A cash balance type formula generally defines a benefit for each employee by reference to a single-sum amount, such as 1- percent of final average pay times years of service, or the amount of the employee's hypothetical account balance.
Caveat 54	(Should no longer be used. For historical purposes only) (Selective) This determination letter considers the information submitted in your letter dated {20V}.
Caveat 55	(Should no longer be used. For historical purposes only) (Selective) This determination letter also considers the information submitted in your letter dated {20V}.

Continued on next page

Caveats for 1132 letters read as follows, Continued

Caveat 5998	(Selective) We have sent a copy of this letter to your representative as indicated in your Power of Attorney.
Caveat 8503	(Selective) Benefit Assurance Form
Caveat 7002	(Selective) This determination is conditioned upon your adoption of the proposed restated plan as submitted with your representative's letter dated [20V]. The proposed plan should be adopted on or before the date prescribed by the regulations under code section 401(b).
Caveat 7027	(Selective) This determination letter is also applicable to the amendment(s) dated on [20V].
Caveat 7054	(Selective) This letter supersedes our letter dated [20V].
Caveat 7056	(Selective) This determination letter is applicable for the partial termination of this plan which occurred in the [20V] plan year(s). This letter is contingent upon the accrued benefit of all affected participants to the extent funded in a defined benefit plan or the amounts credited to the participant's account in a defined contribution plan, being fully vested
Caveat 7060	(Selective) This letter is contingent upon the restoration of vested benefits for the affected participants as agreed to in your representative's letter dated [20V].

Recurring Issues

Overview

Introduction	This section provides guidance on issues which the EP Quality Assurance Staff has identified as the most common errors found during the review process.
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Issue 1 – Defined Contribution 415 Limit

Background info.	For limitation years after 1994, GATT removed the linkage of the defined contribution dollar limit for purposes of IRC 415(c) to the defined benefit limit and provides for a separate adjustment to the defined contribution dollar limit. Defined contribution plans are not making the required amendments or do not provide for the correct effective date.
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Limit before 1-1-95	For limitation years beginning before January 1, 1995 the defined contribution annual addition dollar limitation (per IRC section 415(c)(1)) was the greater of \$30,000 or $\frac{1}{4}$ of the dollar limitation applicable to defined benefit plans. The (statutory) defined benefit limit of \$90,000 was adjusted for inflation each year; for limitation years ending in 1994, the \$90,000 limit was at \$118,800.
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Limit after 12-31-94	GATT (P.L. 103-465, section 732(b)(1)) deleted the “or, if greater, $\frac{1}{4}$ of the dollar limitation” (in effect under IRC section 415(b)(1)(A)). So, for limitation years beginning after December 31, 1994, the annual addition dollar limit for defined contribution plans (pursuant to current IRC section 415(c)(1)) was changed to the lesser of \$30,000 or 25 percent of the participant’s compensation.
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Issue 2 – Top-paid group Election and Calendar Year Election

Background Plans, which include the Top-paid group Election or the Calendar Year Election, are failing to specify if they intend to use it. IRC 414(q) and Notice 97-45.

Section V., part (3) of Notice 97-45 provides that notification or filing with the Internal Revenue Service of a top-paid group election or calendar year data election is not required for the election to be valid. However, section VII., part (1) of Notice 97-45 states: “If an employer makes either a top-paid group or calendar year data election for a determination year, a plan that contains the definition of HCE must reflect the election. If the employer changes either a top-paid group or calendar year data election, the plan must be amended to reflect the change. However, a plan is not required to add a definition of HCE merely to reflect a top-paid group or calendar year data election.”

Top-paid group Election IRC section 414(q)(1) provides (in part):

“In general. The term HCE means any employee who

(A) was a 5-percent owner at any time during the year or the preceding year, or

(B) for the preceding year had compensation in excess of \$80,000 and, if the employer elects the application of this clause by plan amendment for such preceding year, was in the top-paid group of employees for such preceding year.”

Notice 97-45 provides guidance on making the top-paid group election, under which an employee (other than a 5-percent owner) with compensation in excess of the dollar threshold is an HCE only if the employee is among the highest 20 percent of an employer’s workforce.

If the plan contains language to this effect, the election must be specified.

Continued on next page

Issue 2 – Top-paid group Election and Calendar Year Election, Continued

Calendar Year Election	Notice 97-45 also provides for a new calendar year data election, under which an employer that maintains one or more plans on a fiscal year basis has the option to use calendar year data to simplify the determination of whether an employee is an HCE. If the plan contains language to this effect, the election must be specified.
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Recurring Issue Focus dated 3-20-02	For a more in-depth discussion, see the Recurring Issue Focus that was issued by the EP Quality Assurance Staff on 3-20-02. This can be found on the INTRANET under TEGE – Employee Plans Rulings and Agreements – Quality Assurance – Recurring Issues - 3/2002 Focus Report.
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Issue 3 – Distributions of Excess Contributions and Excess

SBJPA Law	The dollar amount of the total reduction is still calculated under the ratio leveling method. However, SBJPA changes how the dollar amounts are reallocated to HCEs. If excess contributions or excess aggregate contributions are returned to HCEs in order to satisfy the ADP or ACP test, the excess must be returned first to the HCE with the largest dollar amount , rather than in the order of the highest percentage.
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Plans are failing to properly include both steps of this process to distribute excess contributions as well as excess aggregate contributions.

Notices 97-2 and 98-1, IRC §§401(k)(8) and 401(m)(6).

Aggregate Contributions

Pre-SBJPA Law	Prior to SBJPA, excess contributions and excess aggregate contributions allocated to HCEs were returned based on the order of Actual Deferral Ratios (ADRs) and Actual Contribution Ratios (ACRs) beginning with the highest percentage. Section 1433(e) of SBJPA amended IRC §§401(k)(8) and 401(m)(6) to change the allocation of distributions to HCEs, effective for years beginning after December 31, 1996.
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Issue 4 – Definition of 415 Compensation

SBJPA amended 415 compensation for limitation years beginning after 12-31-97	SBJPA amended the definition of 415 compensation for limitation years beginning after December 31, 1997.
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Compensation for years beginning in 1998 includes elective deferrals	For purposes of Internal Revenue Code section 415, compensation for limitation years beginning in 1998 includes elective deferrals and any amount contributed by the employer at the election of the employee and not included in the employee's gross income by reason of section 125 and 457. Plans are not being amended accordingly.
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Issue 5 – Definition of Compensation for CRA 2000

**IRC
415(c)(3)(D)
now provides
for inclusion of
132(f) in
addition 125
and 457**

IRC section 415(c)(3)(D) now provides that the term “participant’s compensation” shall include:

- any elective deferral (as defined in IRC section 402(g)(3)) and
- any amount which is contributed or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of IRC section 125, 132(f)(4), or 457.

The general effective dates are 1-1-98 to 1-1-01.

Continued on next page

Issue 5 – Definition of Compensation for CRA 2000, Continued

The definitions of compensation for 415, 414(q) and 416 must satisfy the requirements of CRA 2000

The definitions of compensation for purposes of:

- 1) applying the limitations of IRC section 415,
- 2) determining who is an HCE under IRC section 414(q),
- 3) determining who is a key-employee under IRC section 416 and
- 4) the minimum top-heavy contributions and benefits required by IRC section 416 are not being amended to satisfy the requirements of CRA 00 and/or plans are failing to indicate the effective date. The general effective dates are 1-1-98 to 1-1-01.

The plan should read as follows:

For plan and limitation years beginning on and after January 1, 2001 or, if earlier _____ (enter date plan complied in operation, but no earlier than January 1, 1998, even if the plan does not provide for IRC section 132(f)(4) fringe benefits):

For purposes of the requirements described above, compensation paid or made available during such plan and limitation years shall include elective amounts that are not includible in the gross income of the employee by reason of IRC section 132(f)(4). Effective for plan and limitation years beginning on and after January 1, 2001, the definition of compensation should also include IRC §132(f)(4).

Issue 6 – Amendments Made to 415(b)(2)(E)

GATT and SBJPA amended IRC 415(b)(2)(E) for limitation years beginning after 12-31-94

Effective for limitation years beginning after December 31, 1994, the General Agreement on Tariffs and Trade (GATT) and the Small Business Job Protection Act of 1996 (SBJPA) amended Internal Revenue Code (IRC) section 415(b)(2)(E).

Revenue Ruling 98-1 and Field Directive dated 6-9-98 provide clarification and guidance

Revenue Ruling 98-1 and the June 9, 1998 Field Directive provide clarification and guidance regarding the changes to IRC section 415(b)(2)(E) and state that an employer has two options in amending its plan for such changes.

1. The first option is to apply the new requirements to all benefits under the plan as of the Retirement Protection Act of 1994 section 415 effective date (the first day of the first limitation year beginning in 1995), including benefits that accrued before such date.
2. The second option is to protect some portion of a participant's benefit that accrued on or before a date that is earlier than the first day of the limitation year beginning after December 31, 1999 (this option will require more detailed and complicated plan amendments).

The complete revenue ruling and field directive cited may be found in the 1999 EP CPE course book.

Defects include

Defects include: failure to provide the correct definitions of Applicable Interest Rate, Applicable Mortality Table, Stability Period and Lookback Month, failure to provide the correct effective dates for the change and the failure to include any of the required language for adjustments when the benefit begins before and after social security retirement age and for benefits subject to and not subject to IRC 417(e).

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Issue 6 – Amendments Made to 415(b)(2)(E), Continued

Definitions**Applicable Interest Rate**

The applicable interest rate for a month is the annual interest rate on 30-year Treasury securities as specified by the Commissioner for that month in revenue rulings, notices or other guidance. The definition must specify the lookback month and stability period as described below.

Applicable Mortality Table

The applicable mortality table is the mortality table based on the prevailing commissioners' standard table used to determine reserves for group annuity contracts issued on the date as of which present value is being determined and that is prescribed by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin.

In Revenue Ruling 95-6, the IRS announced the applicable mortality table for this purpose, which is a unisex table based on 50% of the male mortality rates and 50% of the female mortality rate from the 1983 Group Annuity Mortality Table (modified GAM 83).

Stability Period

The stability period is the period for which the applicable interest rate remains constant. The stability period may be one calendar month, one plan quarter, one calendar quarter, one plan year or one calendar year.

Lookback Month

The lookback month may be the first, second, third, fourth or fifth full calendar month preceding the first day of the stability period. A plan must specify the lookback month that is used to determine the applicable interest rate.

Issue 7 – Terminating Plans Compliance with IRC 411

**Plans must
comply with
IRC 411 when
terminating**

Terminating plans are being closed without verification of the plan's compliance with IRC 411. Information must be secured verifying that all participants who were dropped without full vesting were properly cashed out in accordance with the plan or, alternatively, will be fully vested upon the plan's termination.

IRC section 411(d)(3) provides (in part) that a trust shall not constitute a qualified trust under IRC section 401(a) unless the plan of which such trust is a part provides that upon its termination, partial termination, or (where IRC section 412-minimum funding-does not apply) upon complete discontinuance of contributions under the plan, the rights of all affected employees to benefits accrued to the date of such termination, partial termination, or discontinuance, to the extent funded as of such date, or the amounts credited to the employees' accounts, are nonforfeitable.

Issue 8 – Incorporation by Reference

IRC 414(n), 414(q) and 415	Plans are impermissibly incorporating IRC 414(n), 414(q) and the 415 definition of compensation by reference. QAB 2001-1 outlines the Code sections which may be incorporated by reference.
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Issue 9 – Plan Executed by Last Day of First Plan Year and/or Timely Amended for TRA 86, UCA 92 and OBRA 93

Original plan executed timely	Cases are being closed without verifying that the plan was executed by the last day of the first plan year. Agents must verify that the original plan was signed by the last day of the first plan year if the case does not contain a prior determination letter.
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Timely amended for prior laws	Cases are being closed without verification that the plan was timely amended for TRA, 86 including UCA 92, and OBRA 93. Generally, these amendments should have been adopted by December 31, 1994 for calendar year plans. If the plan has a prior determination letter which contains a 93-39 caveat then the plan is considered timely amended for these laws.
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Prototype sponsors (M&P and RP) can adopt an amendment on behalf of its adopting employers. Volume Submitter plans are treated as individually designed plans and cannot adopt amendments on behalf of adopting employers.

Issue 10 – Definition of Required Aggregation Group

Definition per IRC 416(g)(2)(A)(i)	Plans incorrectly defined required aggregation group as required by IRC 416(g)(2)(A)(i). The phrase in the definition which reads: "...sections 401(a)(4) or 410..." incorrectly reads: "... sections 401(a)(4) and 410...", this is the definition of a permissive aggregation group under IRC 416(g)(2)(A)(ii).
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Required aggregation group – should use “**or**” – see IRC 416(g)(2)(A)(i)

Permissive aggregation group – should use “**and**”- see IRC 416(g)(2)(A)(ii)

Issue 11 – 5310 Applications Submitted Without Schedule Qs

5 instances

There were 5 instances for the quarter ended 9-30-02 where Form 5310 applications were submitted without Schedule Qs. Announcement 2001-77 changed the requirement that all plans must submit Schedule Qs, however, this change did not apply to Form 5310 applications.

Section 12.03 of Rev. Proc. 2003-6 (revised annually) provides that an applicant requesting a determination letter upon termination **may not decline** to elect that the plan be reviewed for the minimum coverage requirement or the nondiscrimination in amount requirement, as otherwise permitted under section 5.03 and 5.04, unless:

- the plan has received a favorable determination letter stating that the plan has satisfied the coverage and nondiscrimination in amount requirement,
- the favorable determination letter was issued during the immediately preceding three year period, and
- there have been no material changes in the facts (including benefits provided under the plan and employee demographics) or law upon which the determination was based.

Schedule Q is still optional, but the minimum coverage requirements and nondiscrimination in amount requirement remains in effect for terminating plans. The employer must provide a Schedule Q with lines 5,7 and 9 completed or an equivalent worksheet simulating the aforementioned lines.

Issue 12 – Incorrect Determination Letter

10 instances

There were 10 instances for the quarter ended 9-30-02 where the determination letter was incorrect. These errors included incorrect or missing amendment dates, incorrect law ruling caveats, omissions of caveats, and incorrect caveats.

Recurring issues report, quarter ended March 31, 2001

RECURRING ISSUES REPORT

EMPLOYEE PLANS

Quarter Ended March 31, 2001

1. Effective for limitation years beginning after December 31, 1994, the General Agreement on Tariffs and Trade (GATT) and the Small Business Job Protection Act of 1996 (SBJPA) amended Internal Revenue Code (IRC) section 415(b)(2)(E). Revenue Ruling 98-1 and the June 9, 1998 Field Directive provide clarification and guidance regarding the changes to IRC section 415(b)(2)(E) and state that an employer has two options in amending its plan for such changes. Plans are failing to provide the correct form adjustments when a benefit is subject to 417(e)(3). In addition, incorrect effective dates are being used.
2. For years after 1994, GATT removed the linkage of the defined contribution dollar limit for purposes of IRC 415(c) to the defined benefit limit and provides for a separate adjustment to the defined contribution dollar limit. Defined contribution plans are not making the required amendments or do not provide for the correct effective date.
3. Plans, which include the Top Paid Group Election or the Calendar Year Election, are failing to specify if they intend to use it. IRC 414(q) and Notice 97-45.
4. Plans are failing to provide the proper effective date for IRC 414(u) as December 12, 1994. IRC 414(u) and Rev. Rul. 96-49.
5. Plans are failing to eliminate the requirements of IRC 415(e) effective for limitation years beginning after December 31, 1999.

Continued on next page

Recurring issues report, quarter ended March 31, 2001,

Continued

6. Section 401(a)(31) of the Code requires plans to permit distributees to elect to have an eligible rollover distribution paid to an eligible retirement plan. Section 401(c)(4) defines eligible rollover distribution. The IRS Restructuring and Reform Act of 1998 (RRA) amended section 402(c)(4), effective for distributions after December 31, 1998, to specify an additional exception to the definition of eligible rollover distribution for any hardship distribution described in section 401(k)(2)(B)(i)(IV). Notices 99-5 and 2000-32 provide guidance and relief with respect to this change. The August 3, 2000 Memo from the Manager, EP Technical Guidance and Quality Assurance regarding the GUST II Determination Letter Program Opening states: "Plans that may have to be amended include section 401(k) plans and profit sharing and stock bonus plans (even if they do not include a qualified cash or deferred arrangement)." Plans which are requesting a Full GUST ruling are failing to include this change. See Rev. Proc. 99-23 and Notices 99-5 and 2000-32 and Announcement 2000-77.
7. Plans are failing to provide the correct effective date for the change to IRC 414(n) made by SBJPA, which is January 1, 1997. In addition, plans are improperly excluding leased employees from the definition of employee.
8. Plans are failing to provide that the reason for excess annual additions are the following: as the result of the allocation of forfeitures, a reasonable error in estimating compensation, a reasonable error in determining the amount of elective deferrals under 402(g)(3) or other limited facts and circumstances. See Regs. section 1.415-6(b)(6).
9. Plans are failing to provide the correct definition of Required Aggregation as required by IRC 416(g).
10. Plans are failing to provide the correct effective dates for changes made by GUST law changes, for example the change to the definition of Highly Compensated Employee and the increase in the cash-out limit.
11. Plans are failing to provide both the ratio leveling and dollar leveling for disposing of excess deferrals and/or excess aggregate contributions.
12. Plans are failing to remove the requirements of family aggregation for purposes of the definition of Highly Compensated Employee and for purposes of limiting compensation.

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Continued

13. Plans are failing to designate the method of correcting the Multiple Use Test.
14. Cases are being closed without verification that the plan was adopted within the initial plan year. Also, plans are being closed without verification that the plan was timely amended for all applicable law changes including TRA 86, UCA 92 and OBRA 93.
15. IRM 7.7.2.2.8 states in general, no part of the corpus of the trust of a qualified plan may revert to the employer. However, in the event of a termination of a defined benefit plan, amounts in excess of that required to satisfy all liabilities with respect to employees and their beneficiaries may revert to the employer if such amounts are the **result of an erroneous actuarial computation**. See IRC 401(a)(2) and Regulation section 1.401-2. Form 5310 applications indicating that a reversion will occur are being closed without securing proof that the reversion is due to erroneous actuarial computation.
16. Amending a plan for GATT's 417(e)(3) provisions could result in an increase in a reversion or could create a reversion where none existed before. Section 3 (page 5) of the Headquarter's Field Directive of June 23, 1995 states that: "Any increase in the reversion of plan assets to the employer that is attributable to a plan amendment applying the new GATT interest and mortality assumptions is not considered to be the result of erroneous actuarial computation within the meaning of 1.401-2 of the Regulations. Therefore, a plan amendment causing such an increase could violate 401(a)(2)." Form 5310 applications are being closed before this issue is fully addressed. Specifically, assurance must be obtained that the 417(e)(3) amendment did not result in an increase in reversion or create a reversion.
17. SBJPA amended the definition of 415 compensation for limitation years beginning after December 31, 1997. For purposes of Internal Revenue Code section 415, compensation for years beginning in 1998 includes elective deferrals and any amount contributed by the employer at the election of the employee and not included in the employee's gross income by reason of section 125 and 457. Plans are not being amended accordingly.
18. There were 5 instances where the favorable determination letters were incorrect.